

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BECKY L. OGDEN, BRADLEY D. HUTCHINSON
and GEORGE P. SOUTHWELL

Appeal No. 2000-0053
Application 08/829,863

ON BRIEF

Before PAK, OWENS and PAWLIKOWSKI, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the examiner's final rejection of claims 1-18, which are all of the claims remaining in the application.

THE INVENTION

The appellants' claimed invention is directed toward a

process for restoring a storage tank by placing in the tank a mixture of unconsolidated solids and a gelation solution and then gelling the gelation solution. Claim 1 is illustrative:

1. A process for restoring a storage tank comprising:

preparing a slurry containing unconsolidated solids and a gelatin solution, wherein said gelation solution includes an aqueous liquid solvent, a crosslinkable polymer and a crosslinking agent;

placing said slurry in a storage tank having an internal bottom surface;

gelling said gelation solution substantially to completion in said storage tank to form a gel; and

binding said unconsolidated solids with said gel to convert said slurry into a continuous hardened conglomeration.

THE REFERENCES

Sydansk et al. (Sydansk) 1987	4,683,949	Aug. 4,
Smith 1987	4,706,754	Nov. 17,
Clay 1992	5,172,825	Dec. 22,

THE REJECTION

Claims 1-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Clay in view of Sydansk or Smith.

OPINION

We reverse the aforementioned rejection.

Clay discloses a process which eliminates dead volume between the outlet and bottom of a storage tank and also restores the tank, and which differs from the appellants' claimed process only in that Clay does not combine unconsolidated solids with a gelation solution which is placed in the tank (col. 1, line 62 - col. 2, line 17; col. 3, line 21 - col. 4, line 15).

Sydansk (col. 1, line 66 - col. 2, line 24; col. 3, lines 22-36; col. 4, lines 35-60) and Smith (col. 1, line 57 - col. 2, line 16; col. 2, lines 29-57; col. 3, lines 3-8) both disclose processes for reducing the permeability of a high permeability region of a subterranean hydrocarbon-containing formation, thereby improving the vertical and areal conformance of the formation, by injecting into the formation a mixture of a gelation solution, which is essentially the same as that used by Clay, and an inert filler such as crushed or naturally fine rock material or glass beads.

The appellants argue that the processes of Sydansk and Smith are nonanalogous art with respect to the appellants' claimed process (brief, pages 8-12).

The Federal Circuit has held that the process of Sydansk is nonanalogous art with respect to the process of Clay. See *In re Clay*, 966 F.2d 656, 660, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). The test set forth by the court for determining whether a reference is analogous art is "(1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *Clay*, 966 F.2d at 658-59, 23 USPQ2d at 1060. The court stated that Sydansk's field of endeavor, which is the extraction of crude petroleum and involves the use of a gel at significant well bore pressures and temperatures as high as 115°C in unconfined and irregular volumes in underground natural oil-bearing formations, differs from Clay's field of endeavor, which is the storage of refined liquid hydrocarbon products and involves the use of gel in a confined dead volume of a storage tank. See *Clay*, 966 F.2d at 659, 23 USPQ2d at 1060. The court also stated that the problem which Sydansk addressed, which is recovering oil from

porous, permeable sedimentary rock of a subterranean formation, is not reasonably pertinent to the problem addressed by Clay, which is eliminating storage tank dead volume to prevent product contamination and loss of stored product. See *Clay*, 966 F.2d at 659-60, 23 USPQ2d at 1061.

The same differences between the fields of endeavor of Sydansk and Clay exist between the fields of endeavor of Sydansk and the appellants.

The primary problems addressed by Clay are loss of product to a storage tank's dead volume between the outlet and the bottom of the tank, and contamination of the product by contaminants settled in this dead volume (col. 1, lines 54-61). The problem addressed by Sydansk is as dissimilar to the problem addressed by the appellants, which is leakage from the bottom of a hydrocarbon storage tank caused by corrosion or pitting damage (specification, page 1, lines 16-18), as it is to the storage tank dead space problem addressed by Clay. Moreover, Clay addresses another problem, not discussed by the court, which is solved by his process, namely, leakage from a hydrocarbon storage tank caused by rust or corrosion (col. 2, lines 13-17). This is the problem addressed by the

appellants. Thus, as with the processes of Sydansk and Clay, the process of Sydansk is not reasonably pertinent to the problem addressed by the appellants.

Because of the similarity of the distinction between the fields of endeavor and problems addressed by Sydansk and Clay, and those of Sydansk and the appellants, and because *Clay* is binding precedent for the board, we hold that the process of Sydansk is nonanalogous art with respect to the appellants' claimed process. Also, because Smith's field of endeavor and problem addressed are the same as those of Sydansk, we likewise hold that the process of Smith is nonanalogous art with respect to the appellants' claimed process.

The examiner appears to argue that Sydansk is analogous art because Clay is analogous art and Sydansk uses basically the same gelation solution as Clay (answer, pages 5-6). This similarity alone is not sufficient put Sydansk's process in the appellants' field of endeavor or to render Sydansk reasonably pertinent to the problem addressed by the appellants.

For the above reasons we find that the examiner has not set forth a factual basis which is sufficient for establishing

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a *prima facie* case of obviousness of the appellants' claimed invention. Accordingly, we reverse the examiner's rejection.

DECISION

The rejection of claims 1-18 under 35 U.S.C. § 103 over Clay in view of Sydansk or Smith is reversed.

REVERSED

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CHUNG K. PAK)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TERRY J. OWENS))
Administrative Patent Judge)	APPEALS AND
)	
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